although that section empowers a Court to call evidence "at any time" there is a clear and distinct limitation upon this discretionary power. I have had occasion before to point out that although a section of the Code may give the Court a very wide discretion such discretion must be exercised subject to such well-known legal principles as are applicable in each case, *Public Prosecutor v. Yeoh Chee Bah and two Others*[4]. It has been laid down by the Court of Criminal Appeal in England that after the defence has been closed no further evidence should be called either by the Court or by either party unless the cause for such evidence is one which no human ingenuity could have foreseen, *Rex v. Day*[5]. The rule is no new one and had been laid down in *Rex v. Frost*[6] where it was decided that the usual rule that the prosecution must close their case before the defence begins would also apply to a case where a witness is called in a criminal trial by the Judge after the case for the defence is closed. It is clear, therefore, that the calling of this witness at that stage was irregular.

Mr. Benjamin urged upon me that the calling of a witness at this stage of the trial must have prejudiced the appellants and may have influenced the Magistrate in his decision. I was unable to agree with this submission. I do not think that this particular evidence carried the matter any further and I do not think it can have influenced the Magistrate's decision in any way. For these reasons I held that section 422 of the Criminal Procedure Code applied and that this was not a ground for interfering with the decision of the Magistrate.

On the whole I was satisfied that the decision of the Magistrate was right and that the irregularities above referred to did not occasion any failure of justice.

For these reasons I dismissed the appeal.

Appeal dismissed.

PUBLIC PROSECUTOR v. DORAISAMY.

[Crim. Rev. Juris. (Thomson, J.) December 17, 1949]

[Ipoh — Misc. Crim. Application No. 21 of 1949]

Emergency (Registration Areas) Regulations, 1948, s. 10(1) — Production of Identity Card within reasonable time — Interpretation of.

In this case the accused Doraisamy was charged that he failed to produce his Identity Card when it was demanded from him by a Police Officer. It appeared that the Identity Card was produced about an hour later. He was acquitted on the ground that what the Regulation required was the production of an Identity Card within a reasonable time of its production being demanded.

Held, (1) that what the citizen is required to do when his Identity Card is demanded of him is, unless he is allowed some greater time by the Police Officer demanding it, to proceed forthwith to take all reasonably possible steps to produce his card at the earliest possible moment. It is impossible to lay down any rule of universal application as to what will constitute such steps. If he has his card in his pocket, it is clearly his duty to take it out of his pocket and produce it. If his card is in some place of safety, it is clearly his duty to proceed to that place, if he is physically permitted to do so, and return with the card with all reasonable speed. Whether or not he has complied with the law, whether or not he had taken all reasonably possible steps with all reasonable speed to comply with the demand of the Police Officer is in every individual case a question of fact to be determined by the Court trying the case. (2) That the question of what constitutes an offence under Regulation 10 of the Regulations does not necessarily have a specific bearing on the exercise by the Police of their powers under Regulation 20 to arrest without warrant any person suspected of the commission of an offence against the Regulations. It may well be that a person who instead of carrying his Identity Card upon him leaves it in a place of safety would be immune from criminal liability under Regulation 10, but it does not follow that he would not be exposed, and exposed without remedy, to the danger of being arrested by a Police Officer who genuinely took the view that in all the circumstances of the particular case failure to produce an Identity Card for immediate inspection made out grounds for suspicion that an Identity Card did not exist and that accordingly the party in question had committed the offence of failing to register.

Cases referred to:—

(1) *Bradley v. Bradley* 3 P.D. 47.

(2) *Hasting v. Hasting* (1948) P.D. 68.

(3) *Scott v. Scott* (1921) P.D. 107, 120.

(4) *Fox v. Fox* (1925) P.D. 157, 167.

CRIMINAL REVISION.

E. N. Griffith-Jones for Public Prosecutor.

Cur. Adv. Vult.

Thomson, J.: — The accused in this case was charged that he failed to produce his Identity Card when it was demanded from him by a Police Officer in contravention of Regulation 10(1) of the Emergency (Registration Areas) Regulations, 1948. He claimed trial. The evidence against him was that during the hours of daylight he was arrested in possession of a quantity of toddy. At the time of his arrest he did not produce his Identity Card but this was produced about an hour later by his foreman. On that the Magistrate decided there was no case for him to answer and acquitted him on the ground that what the Regulation required was the production of an Identity Card within a reasonable time of its production being demanded and that this had been done. As the matter is of some public importance, the Magistrate has now sent the case for review.

The Emergency (Registration Areas) Regulations, 1948, provide that the Mentri Besar of any State (or the Resident Commissioner in any Settlement) may

declare any area to be a registration area and direct that all or any specified class of persons within such area shall register with the police. Registration on the part of the individual who is required to register himself involves the supplying to the registration authority of a large number of particulars relating to his identity. This would appear to be the main object of the Regulations, and the remainder of their provisions would appear to be ancillary to it. I am not concerned with any of these ancillary provisions save those contained in Regulation 10, but it is not without importance to observe that nowhere among them is to be found any provision requiring the individual who has been issued with an Identity Card to carry that card upon his person. On the contrary, the wording of Regulation 9 which says that a person to whom an Identity Card has been issued shall be "responsible for the custody thereof", would seem to suggest that the Legislature was principally concerned with preventing the card falling into the hands of anyone other than the lawful holder rather than with the precise nature of the steps that the holder might consider it advisable to take to secure that end.

Turning to Regulation 10, that Regulation provides that any Police Officer may at any time require any person required to be registered to produce his Identity Card for inspection and "if such person refuses or fails to produce such card on demand or within such time as such Police Officer .... may allow", he is guilty of an offence which is punishable with three years imprisonment or a fine not exceeding $5,000 or both such imprisonment and fine. What I have to decide here is in effect whether that provision is to be read as meaning that a person who is required to produce his card and who is not allowed time to do so by a Police Officer is guilty of an offence if he fails to produce it immediately after he is required to do so, or, to put it another way, whether the Regulation is to be read as virtually compelling a person to whom an Identity Card has been issued to carry it with him upon his person at all times so that it may be produced immediately on being required by a Police Officer.

I fully appreciate the necessity for legislation of this type in present day circumstances. Nevertheless I must refuse to put so strict an interpretation as has been suggested upon this particular Regulation. If the Legislature had intended that the citizen should carry his Identity Card upon his person at all times and in all circumstances it should have said so and not contented itself with saying that he should be responsible for its custody. Again, had it intended to require that the citizen should produce his card immediately after a demand was made for it by a Police Officer, it should have said so. It has not said either of these things and, that being so, the only reasonable conclusion I can come to as to the meaning of the Regulation is that what the citizen is required to do when his Identity Card is demanded of him is, unless he is allowed some greater time by the Police Officer demanding it, to proceed forthwith to take all reasonably possible steps to produce his card at the earliest possible moment. It is impossible to lay down any rule of universal application as to what will constitute such steps. If he has his card in his pocket, it is clearly his duty to take it out of his pocket and produce it. If his card is in some place of safety, it is clearly his duty to proceed to that place, if he is physically permitted to do so, and return with the card with all reasonable speed. Whether or not he has complied with the law, whether or not he had taken all reasonably possible steps with all reasonable speed to comply with the demand of the Police Officer is in every individual case a question of fact to be determined by the Court trying the case.

I am confirmed in this view by a consideration of the long line of cases commencing in 1878 with *Bradley v. Bradley*[1] and ending in 1948 with *Husting v. Husting*[2], in which the English Courts have had before them the meaning of the word "on" as it occurs in section 32 of the Matrimonial Causes Act, 1857, (now section 190 of the Supreme Court of Judicature (Consolidation) Act, 1925) which provides that the Court may "on" any decree for the dissolution of marriage make an order for maintenance. Of these cases I would refer here to two only. In the case of *Scott v. Scott*[3] the point was dealt with as follows by Lord Sterndale M.R. :—

> "The .... question is, what is the meaning of "on any decree for dissolution"? I was inclined at one time to think that it means at the same time as the decree was made, or, as it could not precede it, at any rate immediately following upon it ..... however ..... it seems to me that .... a more elastic meaning must be given to the word "on" and that it does not mean "on" in the very narrow sense that I first thought it ought to be taken to mean, but that it must at any rate be limited to this extent — namely, it must be at the same time as the decree or within a reasonable time afterwards, and that what constitutes a "reasonable time" must no doubt depend on all the circumstances of the case"

and in the case of *Fox v. Fox*[4], Pollock, M.R., quoted with approval the dictum of Lord Denman, C.J., in another connection to the effect that the word "on" "may mean before or simultaneously with or after an act done according as reason and good sense require with reference to the context".

Returning to the present case, the Magistrate had ample grounds for finding that the accused had done all he could reasonably be expected to have done to

produce his card at the earliest possible moment, and that being so, he was quite right to dismiss the case.

What I have said, of course, relates only to the question of what constitutes an offence under Regulation 10 of the Regulations and does not necessarily have a specific bearing on the exercise by the Police of their powers under Regulation 20 to arrest without warrant any person suspected of the commission of an offence against the Regulations. It may well be that a person who instead of carrying his Identity Card upon him leaves it in a place of safety would be immune from criminal liability under Regulation 10, but it does not follow that he would not be exposed, and exposed without remedy, to the danger of being arrested by a Police Officer who genuinely took the view that in all the circumstances of the particular case failure to produce an Identity Card for immediate inspection made out grounds for suspicion that an Identity Card did not exist and that accordingly the party in question committed the offence of failing to register.

Reference answered.

BALFOUR v. PUBLIC PROSECUTOR.

[Court of Appeal (Willan, C. J., Taylor and Spenser-Wilkinson, JJ.) December 15, 1949]

[K. L. — Criminal Appeal No. 106 of 1949]

Criminal trial — Evidence — Admissibility of — Evidence called by the Court after close of case for defence — Criminal Procedure Code, s. 425.

The appellant in this case was tried at the Assizes on charges of house-breaking by night with intent to steal, and theft in a dwelling. A principal witness for the prosecution named Suppiah, who was previously an informer, said in his evidence that while he was taking his food at a stall he noticed a soldier offering jewellery to one Hanifa the proprietor of the stall on payment of refreshment but Hanifa declined to take the jewellery. It was expected that the prosecution would call Hanifa as the earliest witness of possession by the appellant of any of the articles alleged to have been stolen. This was not done. This omission was noticed by the trial Judge after the conclusion of the defence evidence but before the speeches of counsel. He adjourned the trial at that stage and directed Hanifa to be called.

Held, that although section 425 of the Criminal Procedure Code authorises the Court to call an additional witness at any stage and although the Court may, in special circumstances, properly do so of its own motion where a case is conducted by counsel, and more especially where a preliminary enquiry has been held, this power should be exercised only in rar cases as, for instance, where one side has raised at the trial a point which the other side could not have foreseen.

Cases referred to :—

(1) *Rex v. Shum Soo* (1949) M.L.J. 142.

(2) *Rex v. Day* (1940) 1 All E.R. 402; 27 Cr. App. R. 168.

CRIMINAL APPEAL.

Appellant in person.

H. Shepherd (D.P.P.) for the respondent.

The judgment of the Court was delivered by :—

Taylor, J. : — The appellant is a Bombardier of the Royal Artillery stationed at Tampin. On the 28th August, 1949 a large number of soldiers, including the appellant, who had recently returned from prolonged operations in the jungle, went to the town and to the local Amusement Park to celebrate the lifting of a curfew.

About 8.30 that evening a soldier visited a block of quarters in Padang Road and spent several minutes examining the identity card of one of the occupants, a mechanic, who saw him in a good light. The soldier then entered another unit of the quarters, occupied by a hawker and her children; no member of the family was then at home. The mechanic informed a neighbour who went and telephoned to the police and to the military and also informed the hawker. Meantime the mechanic saw the soldier go to the back of the quarters and join another soldier. They then went towards the town and separated. The hawker came home, found her door open and her room ransacked and went to the Police Station where she specified $80/- in cash, a ring and a bracelet as articles missing. Her report was timed at 9.55 p.m.

About 9.15, one Suppiah, an unemployed person who had previously acted as a police informer, while taking food at a stall just outside the entrance to the Park, noticed a soldier offering jewellery to the proprietor in payment for refreshments. The proprietor, whose name is Hanifa, declined the jewellery. Suppiah followed the soldier into the Park and saw him hand the jewellery to the Chinese proprietor of another refreshment stall. Suppiah informed two detectives who were on duty in the Park. They went to the stall. The soldier was still there with others. In his presence and hearing the proprietor indicated him as the one who had handed to him a gold ring, a child's bracelet and a necklace, which he then and there handed to the detectives. This was at about 9.45 p.m. They arrested the soldier, who is the present appellant, and took him to the Police Station. The time of arrival does not appear but the jewellery was handed to the Station Officer at 10.50 p.m. The appellant was searched by the Officer-in-charge, Police District, who found two dollars and some odd cents in his pockets.

The complainant, on that same night, identified as hers the three articles brought in by the detectives. The mechanic was at the police station at this time and there